

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

September 5, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Lifeline Connects Coalition Notice of Oral *Ex Parte* Presentation; WC
Docket Nos. 11-42, 09-197, 10-90**

Dear Ms. Dortch:

On August 31, 2017, John Heitmann and Jennifer Wainwright of Kelley Drye & Warren LLP participated in a conference call on behalf of the Lifeline Connects Coalition (Coalition) with Jodie Griffin and Ryan Palmer from the Wireline Competition Bureau.

On the call, we praised the Universal Service Administrative Company's (USAC's) stakeholder engagement efforts and underscored the importance of USAC providing clear guidance that is consistent with Lifeline program rules and accepted implementation and interpretations of those rules. We underscored the need for regulatory certainty and emphasized our view that rules adopted in 2016 should not take on a new meaning through changed interpretation in 2017. To that end, we took issue with two recent public statements by USAC related to the Lifeline program.

First, during a Lifeline program update webinar on August 9, 2017, USAC staff suggested that eligible telecommunications carriers (ETCs) should not include on their reimbursement requests any Lifeline subscribers who are in a non-usage cure period on the snapshot date.¹ We noted that this statement is inconsistent with guidance provided previously by Commission staff which is currently reflected on USAC's website. On USAC's website, that

¹ Specifically, slide 24 during the webinar stated that one of the "reason codes" for omitting a consumer from a Lifeline reimbursement claim under the new process would be "Subscriber is in a non-usage cure period." A copy of the webinar slides is attached to this letter as Attachment A.

KELLEY DRYE & WARREN LLP

Marlene Dortch
September 5, 2017
Page Two

guidance expressly states that “Service providers must provide[] eligible subscribers with service during the cure period and may include subscribers in the cure period in their monthly snapshot.”² This guidance should not be changed, as service providers actually provide service and incur costs in doing so, even when a subscriber does not use the service in the manner defined by Lifeline program rules.

Second, a post on the National Verifier blog dated August 22, 2017 included the sub-heading “Initials...not checkmarks,” suggesting that for all enrollments, the only proper method of completing the required certification statements is to initial them, and checkmarks are never acceptable.³ We take issue with this guidance because, pursuant to the federal E-SIGN Act, subscribers are permitted to utilize click-through functionality, including checkmarks, to memorialize initials and signatures necessary to complete the individual certifications on electronic Lifeline enrollment and recertification forms. We emphasized the need for a clarification to ensure that low-income consumers are not denied the benefits of the E-SIGN Act responsible for powering much of today’s online digital economy.

We also discussed the Lifeline National Eligibility Verifier (National Verifier) being developed by the Commission and USAC, including improvements to the timing of subscriber proof of eligibility for migration to the National Verifier and the recent alarming decision to reverse course and not to provide a service provider application programming interface (API) to the National Verifier. The positions taken on these issues were consistent with those expressed in prior filings.⁴

We look forward to continuing to work with the Commission and USAC to further improve the Lifeline program. Clear rules and consistent guidance are essential to protecting the program from real or perceived waste, fraud and abuse.

² A copy of the USAC website page where this statement is located is attached to this letter as Attachment B.

³ A copy of the blog post is attached to this letter as Attachment C.

⁴ See, e.g., Letter from John J. Heitmann and Joshua Guyan, Kelley Drye & Warren, LLP, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Aug. 24, 2017).

KELLEY DRYE & WARREN LLP

Marlene Dortch
September 5, 2017
Page Three

Pursuant to Section 1.1206(b) of the FCC's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Jennifer R. Wainwright
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

Counsel to the Lifeline Connects Coalition

Attachment

cc: Jodie Griffin
Ryan Palmer

ATTACHMENT A

Minimum Service Standards & New Reimbursement Claims Process

Lifeline Program Update

August 9, 2017



Universal Service
Administrative Co.

Housekeeping

- Audio is available through your computer's speakers
- The audience will remain on mute
- Enter questions at any time using the “Questions” box
 - There is a large audience signed in today. We will accept as many questions as possible!
- If your audio or slides freeze, restart the webinar
- Copy of the slide deck in the “handouts” section of webinar panel

About the Lifeline Program Webinar

Discusses general topics about Lifeline Program, including:

- National Verifier build process
- National Lifeline Accountability Database (NLAD)
- Rules and best practices
- Feedback opportunities

To register for each session, visit www.usac.org/li and select “Trainings & Outreach,” then “Lifeline Program Update Webinars”

Today's Presenters



Kathryn Goffredi

User Support



Tim O'Brien

Operations



Debby Smith

Operations

Agenda

1. Announcements
2. December 1 Update to Minimum Service Standards
3. New Process for Reimbursement Claims
4. Questions and Comments

Announcements

Lifeline Program Webinar

Announcements

- Recent FCC Public Notices about Lifeline
 - DA 17-684: Counties where conditional forbearance of Lifeline-supported voice service applies (for High Cost/Lifeline ETCs)
 - DA 17-729: Vermont will participate in NLAD; service providers must load records by Nov. 1
- Ensure FCC Form 497 claims \leq NLAD subscriber counts
 - FCC Forms 497 will be rejected if the claim is greater than the subscriber count in NLAD; rejections can delay payment
 - Starts with August data month (September 1 snapshot)
 - Compare your FCC Form 497 to the snapshot before submitting it!
- Increased program integrity reviews and requests

Minimum Service Standards

Lifeline Program Update



Refresher: Minimum Service Standards

- The 2016 Lifeline Modernization order established minimum service standards for Lifeline-supported services
 - Recent update in the FCC's Public Notice [DA 17-619](#)
- Standards will **gradually increase** from 2017 to 2021
- Service providers must meet the minimum service standards for the Lifeline-supported service (the service the discount is applied to)
- Current minimum service standards (effective as of December 2, 2016):
 - At least 500 MB of mobile broadband
 - At least 500 minutes of mobile voice
 - At least 10/1 Mbps and 150 GB for fixed broadband

Minimum Service Standards Effective Dec. 1

The minimum service standards that take effect on December 1, 2017 are:

- **Mobile broadband (data):** 1 GB/month of 3G mobile technology
- **Mobile voice:** 750 minutes per month

Minimum Service Standards Effective Dec. 1

The minimum service standards that take effect on December 1, 2017 are:

- **Fixed (home) broadband:** 15 Mbps downstream and 2 Mbps
 - Exception to the MSS when the service provider does not offer any generally available residential fixed broadband packages at the subscriber's residence that meet this standard (in this case, service provider can receive support for the highest-performing fixed broadband residential offering of at least 4 Mbps/1Mbps); see [FCC DA 17-619](#)
- **Fixed (home) broadband:** 250 GB of usage per month
- **Fixed (home) voice:** No minimum service standard

Minimum Service Standard for Bundles

- If the consumer is receiving a **bundled service**, service providers are advised to apply the Lifeline support to **one** of the services in the bundle
 - Affects the minimum service standards and port freeze
- Only the service that the Lifeline support is **applied to** must meet the minimum service standard
 - Other services in the bundle are not required to meet the standards

FAQs

1. How can I explain the new standards to my customers?

- In cases where a current Lifeline-supported plan will no longer meet the standard in December 2017, USAC requires notifying affected customers at least **one month in advance**.

The notification should inform the customer that their current plan no longer qualifies for Lifeline and offer the option to (1) switch to a Lifeline-supported plan with their current provider or with a new provider, or (2) be de-enrolled from Lifeline and pay \$XX for their current plan (if their current plan is still being offered by their carrier).

If an ETC provides **better service** in order to meet the minimum service standard without an additional charge to the customer, any port freeze would remain in place.

If an ETC increases the cost to the consumer or reduces a service (such as reducing voice minutes in order to increase broadband up to the minimum service standard), the consumer would no longer be subjected to the port freeze, as their plan has materially changed.

FAQs

2. What happens to customers with Lifeline-supported service that do not meet the new minimum service standards?
 - Service providers are not permitted to apply Lifeline support to services that don't meet these standards. The options are to upgrade the consumer's service to meet the minimum standard, or cease providing the Lifeline discount for the non-qualifying service.
3. If I upgrade a customer to a new Lifeline-supported service (like broadband), can I re-start the port freeze period?
 - As always, if customer changes from a voice-only service type to a broadband-only service type, you can start a new port freeze period. In other cases, you cannot.
4. What if the consumer refuses to upgrade to a faster broadband service (that meets the new standard, and costs more money)?
 - The consumer can switch service providers or be de-enrolled from Lifeline and pay the undiscounted rate for their plan. In this case, the consumer would no longer be subjected to the port freeze, as their plan has materially changed.

Questions? Comments?

New Process for Reimbursement Claims

Lifeline Program Update

Background: New Process for Reimbursement Claims

In the 2016 Lifeline Modernization Order, the FCC directed USAC to:

1. Create a transition plan for [phasing out the FCC Form 497](#)
 - FCC Form 497 is the “Lifeline and Link Up Worksheet” (reimbursement form)
2. Use NLAD data about enrolled Lifeline subscribers as the [default basis](#) for determining support payments to service providers

The Lifeline reimbursement claims process is changing at the end of the year.

FCC Form 497 will be retired.

New Process for Reimbursement Claims

What's new:

- FCC Form 497 will retire after the December 2017 data month
 - Claims and revisions for data months before January 2018 will still use FCC Form 497
- Effective with the January 2018 data month, **all service providers** must use the new reimbursement claims process
 - This process change is **not related** to the National Verifier rollout

New Process for Reimbursement Claims

What remains the same:

- Action is required to submit the claim (even if there are no changes since last month)
- Snapshot taken on the first of the month shows the subscriber count for the prior month
 - For example: A snapshot taken on September 1 shows the subscriber count for the August data month
- Receive reimbursement in the same month if claim is certified by the 8th* of the month
- Revisions allowed
- Options to report quarterly or up to one year after data month
- Lifeline reimbursement claims **do not** result in any automatic de-enrollments

How it Works: Initial Submission

1. Download the list of subscribers eligible for reimbursement
 - List is available as a report in E-File, based off the NLAD “subscriber snapshot report”
 - The list is in a format service providers will make modifications to, and upload back to the system in the same format
2. Add the dollar amount claimed for each subscriber
 - Defaults to value from prior month
3. Indicate which subscribers are not being claimed and reason why
 - Reason codes will be released later this month
4. Upload report back into E-File (Lifeline Claims System)
5. Certify the submission
 - Indicates that the review is complete and reimbursement claim is submitted

New to E-File?

- To register your company for the first time
 - Visit the [E-File homepage](#) and select “E-File,” then select “new service provider” from the bottom menu
 - Complete the registration using the information from FCC Form 498 (Service Provider ID Number and General Contact Information Form)
- To get a new E-File account
 - Contact your company’s E-File “Officer” or “General Contact”
 - Not sure who is your E-File Admin? Contact customersupport@usac.org
- Help with E-File
 - [E-File User Guide](#)
 - Contact (888) 203-8100 or customersupport@usac.org

Opt-Out States

- The Lifeline reimbursement process will differ for “opt-out states” that do not use the National Lifeline Accountability Database (CA, OR, TX)
 - We hope the process will be very similar to the process for NLAD states
- We are working with the NLAD opt-out states to determine specifics
 - Details will be available on our website on the [Receive Payment](#) web page

Reason Codes for Omitting a Consumer from Claim

- Reason codes for unclaimed subscribers are still under review
- Will represent reasons that a subscriber may appear in NLAD, and not be claimed for reimbursement

Code	Description
TBD	Signed up for Lifeline, no usage yet
TBD	Subscriber is in a non-usage cure period
TBD	Subscriber de-enrolled prior to snapshot, but was not de-enrolled from NLAD prior to snapshot
TBD	Subscriber requested a temporary suspension of their account
	Additional reason codes TBD Please send us your recommended reason codes in the questions/chat box.

**Continue using the current process (FCC Form 497)
through the December 2017 data month.**

**Use the new process
for the January 2018 data month.**

How to Prepare

- Keep NLAD up-to-date
 - Enrollments, de-enrollments, change of subscriber information
 - The Lifeline Program's rules require service providers to update NLAD within one (1) business day
- Start comparing your FCC Form 497 claims to your NLAD snapshot
 - Reminder: FCC Forms 497 will be rejected if the claim is greater than the sub. count in NLAD
- Confirm that you have an E-File account
 - If you are not currently submitting online, you need to set up an account and entitlements in E-File
- Practice the new process
 - The new system will be available in the pre-production environment (release date TBD)

Questions? Comments?

Lifeline Program Webinar

- Thank you for joining us!
- Sign up for Lifeline Program email updates and upcoming events
 - Visit usac.org/li and click “subscribe” in the upper-right corner
- Need help? Contact us!
 - FCC Form 497: Form497@usac.org
 - E-File: CustomerSupport@usac.org
 - General: LifelineProgram@usac.org



Universal Service
Administrative Co.

ATTACHMENT B



[USAC Home](#) | [Lifeline Program](#) | [Telecom Carriers](#) | [Program Requirements](#) | [De-Enroll Ineligible Subscribers](#)

DE-ENROLL INELIGIBLE SUBSCRIBERS

If a subscriber becomes ineligible for the Lifeline Program, they have an obligation to contact their service provider directly and de-enroll from the Lifeline-supported service.

There are several other situations that might result in a subscriber being de-enrolled from discounts:

1. If a telecommunications carrier has a **reasonable basis to believe** a subscriber is no longer eligible, the carrier will send the subscriber a notice of impending termination. The subscriber has 30 days from the date of the impending termination letter to demonstrate continued eligibility by re-certifying his or her continued eligibility (47 C.F.R. Section 54.405(e)(1), 54.410(f)(2)(iii), 54.410(d)(3)).

A carrier that provides Lifeline Program-supported service must terminate service for any subscriber who fails to demonstrate continued eligibility within the 30-day time period (47 C.F.R. Section 54.405(e)(1)).

2. If USAC, the administrator of universal service, provides notification to a telecommunications carrier that a subscriber has **more than one discounted account**, or that more than one member of a subscriber's household is receiving service, the telecommunications carrier must de-enroll the subscriber within five business days (47 C.F.R. Section 54.405(e)(2)).
3. Starting December 2, 2016, subscribers receiving a free Lifeline-supported service must use their service at least every 30 days. Service providers must notify subscribers who do not use their service at least every 30 days that they will be de-enrolled if they do not use their service during the 15-day notice period (the "cure period").

Service providers must provide eligible subscribers with service during the cure period and may include subscribers in the cure period in their monthly snapshot.

4. Subscribers have an obligation to re-certify annually that only one member of their household receives program-supported service and they continue to be eligible.

If a subscriber **fails to respond** to a telecommunications carrier's request for certification, the telecommunications carrier must provide the subscriber with notification that the subscriber has 30 days from the date of the notification to provide the requested certification.

If the subscriber fails to provide the requested certification within the 30-day notification period, the telecommunications carrier must de-enroll the subscriber from program-supported service within five business days from the end of the 30-day notification period (47 C.F.R. Section 54.405(e)(4)).

*Beginning with rolling recertification in 2017, subscribers will have 60 days to respond to the carriers' recertification request/termination notice.



The Universal Service Administrative Company (USAC) is dedicated to achieving universal service. As a not-for-profit corporation designated by the Federal Communications Commission (FCC), we administer the \$10 billion Universal Service Fund. With the guidance of the FCC policy, we collect and deliver funding through four programs that are focused specifically on places where broadband and connectivity needs are acute.

SUBMIT

[Forms](#)
[Payments](#)

NAVIGATE

[Home](#)
[About USAC](#)
[Contributors](#)
[Service Providers](#)
[USAC En Español](#)
[High Cost](#)
[Lifeline](#)
[Rural Health Care](#)
[Schools and Libraries](#)

EXPLORE

[Trainings & Outreach](#)
[Subscription Center](#)
[Careers](#)
[Media](#)
[Appeals & Audits](#)
[Annual Report](#)
[Tools](#)
[FCC Orders](#)
[FCC Filings](#)
[Contact USAC](#)



ATTACHMENT C



Lifeline National Verifier

Updates from USAC as we design, build, and deploy the Lifeline National Eligibility Verifier.

Certification statements

In addition to gathering eligibility information, the National Verifier will also gather customers' signed certification statements.

Simplify, simplify, simplify!

Stakeholders universally agree that the certification statements need to be simplified for easier comprehension. The legal language is particularly difficult for the Lifeline-eligible population to understand. Areas that need special attention and clarification are explaining what a “household” is for Lifeline, and the last two attestations. USAC is working with our partners at the FCC on re-writing the certification statements so they are easier for consumers to understand, and still compliant with the rules.

Initials...not checkmarks

A common problem with the certification statements is that customers do not initial them (as required). Instead, customers place a checkmark on the box or skip it, believing it does not apply to them. Stakeholders encouraged USAC to be very clear that initials are required on all of the certification statements in order to proceed. In particular, customers tended to skip the last two certification statements, believing they do not apply to them.

We'd love to hear about how you support your customers through completing the certification statements. How do you explain the attestations to them?

**Author: lifelineprogram**

The Lifeline Program helps families in need afford voice and broadband connectivity services. [View all posts by lifelineprogram](#)



lifelineprogram / August 22, 2017 / Uncategorized

Lifeline National Verifier / Proudly powered by WordPress